

IC 30-4-5

Chapter 5. Rules Governing the Administration of a Trust

IC 30-4-5-0.5

Application of Uniform Principal and Income Act

Sec. 0.5. The Uniform Principal and Income Act (IC 30-2-14) applies to the administration of a trust under this article.

As added by P.L.84-2002, SEC.4.

IC 30-4-5-1

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-2

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-3

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-4

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-5

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-6

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-7

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-8

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-9

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-10

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-11

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-12

Accounting by trustees

Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or his personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time, provided, however, that the court will not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time provided there is good cause for requiring a statement to be filed.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.41-2000, SEC.5.

IC 30-4-5-13

Content of written statements of account filed with the court

Sec. 13. (Content of Written Statements of Account Filed with the Court)

(a) A verified written statement of accounts filed with the court under 30-4-5-12 or by the trustee under 30-4-3-18(b) shall show:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding written statement of accounts or the original inventory if there is no preceding statement;
- (3) an itemized schedule of all principal cash and property received and disbursed, distributed, or otherwise disposed of during the period;
- (4) an itemized schedule of income received and disbursed, distributed, or otherwise disposed of during the period;
- (5) the balance of principal and income remaining at the close of the period, how invested, and both the inventory and current market values of all investments;
- (6) a statement that the trust has been administered according to its terms;
- (7) the names and addresses of all living beneficiaries and a statement identifying any beneficiary known to be under a legal disability;
- (8) a description of any possible unborn or unascertained beneficiary and his interest in the trust estate; and
- (9) the business addresses, if any, or the residence addresses of all the trustees.

(b) The court may, either on petition or on its own motion, require the trustee to submit such proof as it deems necessary to support his verified written statement of accounts. The court may accept the unqualified certificate of a certified public accountant in lieu of other proof.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-14

Settlements; objections; hearing; surcharge

Sec. 14. (Settlements; Objections; Hearing; Surcharge)

(a) With respect to the annual written statement required by 30-4-5-12(a), a beneficiary or his personal representative will be deemed to have discharged the trustee from liability as to that beneficiary for all matters disclosed in the statement if he approves in writing the trustee's statement.

(b) In a proceeding in which the court has been requested by petition to approve a verified written statement of accounts, any person authorized by 30-4-5-12(c) to petition for an accounting may file an appropriate responsive pleading, and if he does so, he must file it within the period of time after notice that a responsive pleading is required to be filed after service of a prior pleading under the Indiana Rules of Procedure.

(c) When a responsive pleading filed under subsection (b) of this section includes objections to any matter contained in the trustee's statement, those objections must be specific unless the court orders

otherwise.

(d) Upon request for approval of a verified written statement of accounts and the filing of objections, if any, the court shall determine the correctness of the statement and the validity and propriety of all actions of the trustee described in the statement and may take any additional action that it deems necessary.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-15

Judgment; fees

Sec. 15. (Judgment; Fees)

(a) Subject to the right of appeal, a judgment rendered by the court under 30-4-5-14, either approving the statement or disapproving it and surcharging the trustee, is final, conclusive and binding upon all the parties to the action who are subject to the jurisdiction of the court.

(b) Entry of the judgment by the court finally disposes of the matter and the clerk may not tax or charge a service fee for any year beyond that in which the judgment is rendered.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-16

Right to compensation

Sec. 16. (a) Unless the terms of the trust provide otherwise, and except as provided in section 17 of this chapter, the trustee is entitled to reasonable compensation from the trust estate for acting as trustee.

(b) If the terms of the trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

- (1) the duties of the trustee are substantially different from those contemplated when the trust was created; or
- (2) the compensation specified in the terms of the trust would be unreasonably low or high.

(c) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) expenses that were not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.238-2005, SEC.42.

IC 30-4-5-17

Compensation if trustee breaches trust

Sec. 17. (Compensation if Trustee Breaches Trust)

(a) In a proceeding in which the trustee is found to be in breach of

trust, the court may in its discretion either deny him all compensation, allow him a reduced compensation, or allow him full compensation.

(b) In the exercise of its discretion under subsection (a) of this section, the court may consider, among others, the following facts:

(1) whether the breach of trust was intentional, negligent, or without fault;

(2) whether or not the trustee acted in good faith;

(3) whether or not the breach of trust resulted in a loss to the trust estate;

(4) if a loss results, whether the trustee has indemnified the trust estate; and

(5) whether the trustee's services were of value to the trust estate.
(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-18

Private foundations

Sec. 18. Subject to section 20 of this chapter, every corporation which is organized under the laws of this state and which is a private foundation as defined in Section 509(a) of the Internal Revenue Code shall, unless otherwise provided in the articles of incorporation of such corporation:

(a) distribute each taxable year amounts sufficient for such corporation to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code;

(b) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;

(c) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;

(d) not make any investment which would jeopardize the carrying out of any of such corporation's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such corporation to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and

(e) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.2-1987, SEC.47.

IC 30-4-5-19

Private corporate foundations organized before January 1, 1970; application of IC 30-4-5-18

Sec. 19. The provisions of 30-4-5-18 shall not apply to any such

corporation organized before January 1, 1970, to the extent that a court of competent jurisdiction shall determine that application of such section to such corporation would be contrary to the terms of any instrument which may not be changed to conform to such section and by which such corporation is bound.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-20

Private corporate foundations; effective dates of IC 30-4-5-18

Sec. 20. The provisions of 30-4-5-18 shall be effective as to corporations to which such section applies in accordance with the following subsections (a) and (b):

(a) With respect to each such corporation organized on or after January 1, 1970, the provisions of 30-4-5-18 shall be effective from and after the date of such corporation's organization.

(b) With respect to each such corporation organized before January 1, 1970, the provisions of 30-4-5-18 shall be effective during taxable years commencing after December 31, 1971.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-21

Trusts for benevolent public purpose; general rules

Sec. 21. Subject to the provisions of this section and of section 23 of this chapter, every trust for a benevolent public purpose that is subject to the provisions of Subchapter A of Chapter 42 of Subtitle D of the Internal Revenue Code shall:

- (1) distribute each taxable year amounts sufficient for such trust to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code, except that this subdivision shall not apply to split-interest trusts;
- (2) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;
- (3) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;
- (4) not make any investment which would jeopardize the carrying out of any of such trust's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such trust to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and
- (5) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

The provisions of this section shall not apply to split-interest trusts or amounts thereof to the extent that such split-interest trusts and amounts are not, under Section 4947 of the Internal Revenue Code,

subject to the prohibitions applicable to private foundations.
(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.2-1987,
SEC.48; P.L.41-2000, SEC.6.

IC 30-4-5-22

Private and charitable trust foundations; split-interest trusts; creation before January 1, 1970; application of IC 30-4-5-21

Sec. 22. The provisions of 30-4-5-21 shall not apply to any such trust created before January 1, 1970, to the extent that a court of competent jurisdiction shall determine that application of such section to such trust would be contrary to the terms of any instrument which may not be changed to conform to such section and by which such trust is bound.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-23

Private and charitable trust foundations; split-interest trusts; effective date of IC 30-4-5-21

Sec. 23. The provisions of 30-4-5-21 shall be effective as to trusts to which such section applies in accordance with the following subsections (a) and (b):

(a) With respect to each such trust first existing on or after January 1, 1970, the provisions of 30-4-5-21 shall be effective from and after the date such trust comes into existence.

(b) With respect to each such trust existing before January 1, 1970, the provisions of 30-4-5-21 shall be effective during taxable years commencing after December 31, 1971.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-24

Repealed

(Repealed by P.L.2-1987, SEC.53.)